

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MEMORANDUM ORDER

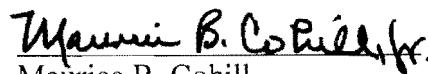
Darien Houser (“Houser”), an inmate incarcerated at the State Correctional Institution at Greene (SCI-Greene) in Waynesburg, PA, filed a Complaint [ECF No. 6] alleging that various Department of Corrections officials , corrections officers, employees, agents, and medical health care providers violated his rights under civil Rights Act of 1871, 42 U.S.C. § 1983, the Americans with Disabilities Act, 42 U.S.C. § 12101, and committed torts under various state tort laws. Three of the named Defendants, Dr. Byunghak Jin, PA Anatoanovich, and PA West (herein “Medical Defendants”) filed a Motion to Dismiss [ECF No. 77] the Second Amended Complaint [ECF No. 72]. Magistrate Judge Cynthia Reed Eddy issued a Report and Recommendation (“R&R”) recommending that the Motion to Dismiss be denied [ECF No. 82]. Objections to the R&R were due on September 15, 2014 and to date no objections have been filed.

In her R&R Judge Eddy states that the Medical Defendants' Motion asserts facts and repeats arguments from a Motion for Summary Judgment in a previous case involving Darien Houser (Houser v. Folino, Civil Action No. 10-416). Namely, the Medical Defendants asserted

and now assert again that because there are numerous accounts of record where Houser was medically treated that it can be assumed that they are not liable for deliberate indifference to Houser's medical needs. In the Houser v. Folino case, the Motion for Summary Judgment was denied. In this case, where the facts and assertions from the Motion to Dismiss were inappropriately drawn from outside the Second Amended Complaint and where the legal standard for a Motion to Dismiss is less rigorous than the legal standard for a Motion for Summary Judgment, Judge Eddy found that Houser's facts and legal assertions in his Second Amended Complaint were sufficient to withstand the Motion to Dismiss. We agree.

Therefore, the following Order is entered:

And now to-wit, this 2nd day of October 2014, it is hereby **ORDERED, ADJUDGED,** and **DECREED** that the Report and Recommendation of Magistrate Judge Eddy dated August 28, 2014 [ECF No. 82] is adopted as the Opinion of the Court in its entirety, including denying Houser's request for a default against Medical Defendants [ECF No. 81].


Maurice B. Cohill, Jr.
Senior United States District Court Judge
Western District of Pennsylvania